

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeals of)
JOSEPH A. AND FIARION FIELDS)

Appearances:

For Appellants: Joseph M. Shaw, Attorney at Law

For Respondent: Burl D. Lack, Chief Counsel;
Wilbur F. Lavelle, Junior Counsel

O P I N I O N

These appeals are made pursuant to Section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protests of Joseph A. and Marion Fields to proposed assessments of additional personal income taxes in the amounts of \$1,941.60 and \$2,008.05 against them, respectively, for the year 1946.

The principal question involved is whether the Appellants were residents of the State of California during the year 1946. Other questions are concerned with the allowance of credit for taxes paid to the State of New York by both Appellants, the partial disallowance of deductions for expenses claimed by Joseph A. Fields, and whether a gain from the sale of certain stock by Marion Fields is subject to tax by the State of California.

The Appellants, Joseph A. and Marion Fields, were married in 1944 and until March, 1946, they resided in New York City. Prior to her marriage Mrs. Fields had been a resident of California for many years and Mr. Fields had been a resident of California as late as 1941. Both Appellants are playwrights and derive income from their profession. While residing in New York City they occupied hotel-apartments. Appellants maintained checking accounts in banks situated in California and New York. The bank records in California show considerable activity from the beginning of March, 1946, and continuing each month thereafter. The various clubs and organizations of which Mr. Fields was a member include the Beverly Hills Tennis Club (California) from 1935 to 1950, City Athletic Club (New York) to 1947, Authors League of America from 1940, Dramatists Guild from 1938 and Screen Writers Guild from 1933.

During March, 1946, Appellants came to California to enable Mr. Fields to perform services as a writer under a ten-week contract with Liberty Films, Inc., and to negotiate for the

Appeals of Joseph A. and Marion Fields

sale of the movie rights to some of his plays. Upon arrival in Los Angeles Mr. and Mrs. Fields were house guests. During the following month (April, 1946) Mrs. Fields became ill with malaria and was hospitalized. Upon discharge from the hospital her physicians advised her to remain in California for a time to recuperate. About the time that Mrs. Fields was released from the hospital the Appellants leased a house in Eeverly Hills, California, for a period of one year. In March of 1947 Appellants purchased a home in Beverly Hills. Appellants did not return to New York nor maintain living quarters in that State after March, 1946.

Both Appellants filed a resident income tax return with the State of New York for the year 1946. They filed separate California nonresident personal income tax returns for 1946 reporting only their gross income from sources within California. In these California returns the Appellants sought tax credits for net income tax paid to the State of New York. Appellant Joseph Fields reported income earned in the State of California for the year 1946 as \$72,500.00, and listed fifteen different items of expense as deductions from such earnings, alleging that they were ordinary and necessary expenses paid or incurred during the taxable year in carrying on his trade or business. Appellant Marion Fields included in her California income tax return for the year 1946 the gain from a **sale of stock of Loma Vista Films, Inc.,** a California corporation.

Concluding that the Appellants were residents of the State of California for the year 1946, the Franchise Tax Board issued the notices of proposed deficiency assessments here in question. In its recomputation of tax the Franchise Tax Board disallowed the sums of \$4,500.00 as travel and entertainment expense and \$3,700.00 as other business expense claimed by Appellant Joseph Fields. The disallowances were based in part on estimates made in the absence of records or other evidence supporting the claimed deductions and in part upon federal audit reports for 1947 and 1948 in which similar deductions were disallowed. It was also determined, against the protest of Appellant Marion Fields, that the gain from the sale of stock was correctly included in her California return as she was a California resident.

The principal question presented is whether the Appellants were residents of California during the year 1946. Appellants contend that they were in this State for a temporary or transitory purpose during 1946. The Franchise Tax Board contends that Appellants were California residents in 1946 and are therefore required to report all taxable income from whatever source derived.

Section 17013 (now 17014) of the Revenue and Taxation Code provided:

"Resident" includes:

(a) Every individual who is in this State for other than a temporary or transitory purpose . . .

Appeals of Joseph A. and Marion Fields

Regulation 17013-17015(a), Title 18, California Administrative Code, provides:

* * *

... The purpose of this definition is to include in the category of individuals who are taxable upon their entire net income, regardless of whether derived from sources within or without the State, all individuals who are physically present in this State enjoying the benefit and protection of its laws and government, except individuals who are here temporarily . . .

* * *

Regulation 17013-17015(b), Title 18, California Administrative Code, discusses the meaning of "temporary or transitory purpose," and provides:

Meaning of Temporary or Transitory Purpose .

Whether or not the purpose for which an individual is in this State will be considered temporary or transitory in character will depend to a large extent upon the facts and circumstances of each particular case. It can be stated generally, however, that if an individual is simply passing through this State on his way to another state or country, or is here for a brief rest or vacation, or to complete a particular transaction, or perform a particular contract, or fulfill a particular engagement, which will require his presence in this State for but a short period, he is in this State for temporary or transitory purposes, and will not be a resident by virtue of his presence here.

If, however, an individual is in this State to improve his health and his illness is of such a character as to require a relatively long or indefinite period to recuperate, or he is here for business purposes which will require a long or indefinite period to accomplish, or is employed in a position that may last permanently or indefinitely, or has retired from business and moved to California with no definite intention of leaving shortly thereafter, he is in the State for other than temporary or transitory purposes, and, accordingly, is 'a resident taxable upon his entire net income even though he may retain his domicile in some other state or country-

Appeals of Joseph A. and Marion Fields

* * *

The underlying theory . . . is that the State with which a person has the closest connection during the taxable year is the state of his residence

The specific question under the statute is whether Appellants were in California for other than temporary or transitory purposes. The facts show that Appellants arrived in this State during March of 1946 and remained in California continuously thereafter. As stated in Appeal of Maurice Amado, Cal. St. Bd. of Equal., April 20, 1951 (2 CCH CCal. Tax Cas., Par. 200-340), (3 P-H State & Loc. Tax Serv., Cal., Par. 58,092) "The 'purpose', whether transitory or not, within the meaning of the statute, is not to be determined alone by the specific, conscious intention to return to the state of domicile in the face of the objective fact of remaining in California."

Appellants fail to disclose the exact length of time which Mrs. Fields was hospitalized, or the period of her recuperation after her discharge from the hospital. If the sole reason for the Appellants remaining in California was the illness and recuperation of Mrs. Fields, however, as Appellants indicate, then the time required **therefor** was certainly long or indefinite. Regulation 17013-17015(b), supra, provides that where a person is within this State to improve his health and his illness is of such a character as to require a relatively long or indefinite period of recovery, the person is in California for other than a temporary or transitory purpose, and is therefore a resident.

It must be reiterated that the underlying **theory** of Sections 17013-17015 is that the state with which a person has the closest connection during the taxable year is the state of his residence. The fact that Appellants maintained a bank account in New York and that Mr. Fields was a member of the City Athletic Club of New York until 1947 does not establish that their closest connections were with the State of New York, since Mr. Fields was a member of a similar club in California during the same years and also maintained a bank account in this State. The following objective facts indicate that the Appellants had the closest connection with California: Appellants did not retain an apartment in New York; shortly after their arrival in this State a home was leased for a substantial period of time; when the lease expired they purchased a home here, and they did not return to New York.

Section 17015 (now 17016) of the Revenue and Taxation Code provided:

Every individual who spends in the aggregate more than nine months of the taxable year within this State or maintains a permanent

Appeals of Joseph A. and Marion Fields

place of abode within this State shall be presumed to be a resident. The presumption may be overcome by satisfactory evidence that the individual is in the State for a temporary or transitory purpose.

Appellants arrived in California in March of 1946 and remained in this State thereafter, a period of more than nine consecutive months in 1946. Thus, under Section 17015, the Appellants are presumed to be residents of California.

Appellants contend that the time beyond the ten-week period of Mr. Fields' contract during which the Appellants remained in California due to the illness of Mrs. Fields is not to be included in computing the nine-month period for this presumption. Appellants cite the Appeal of Woolley, Cal. St. Bd. of Equal., July 19, 1951 (1 CCH Cal. Tax Cas., Par. 200-13,1) (3 P-H State & Loc. Tax Serv., Cal., Par. 58 064) and Example (3) of the Regulations, 17013-17015(b), Title 18, California Administrative Code in support of their contention. Neither of the authorities cited support the proposition that a period of illness is excluded from the nine-month period. The forementioned authorities merely indicate that the establishing of certain facts will overcome the presumption of residency. In our opinion, Appellants have failed to overcome the presumption.

We conclude that Appellants were residents of California during 1946.

The question is presented whether Appellants were entitled to a tax credit for all income taxes paid to the State of New York for the year 1946. The Franchise Tax Board has reconsidered its denial of a tax credit for net income tax paid to the State of New York by Joseph Fields for the year 1946 in view of Belden v. McColgan, '72 Cal. App, 2d 734. Upon the authority of that decision the Franchise Tax Board has determined that a tax credit of \$33.56 should be applied against the amount of net income tax due the Franchise Tax Board from Appellant Joseph Fields for the year 1946. The Franchise Tax Board has computed the credit based upon that proportion of the New York normal tax that the normal business income derived from sources within New York and also taxable by California bears to the total normal business income taxed by New York. In the course of oral argument, after all briefs were filed, Appellants claimed that additional income of Mr. Fields was attributable to New York sources and that some of the income was erroneously treated as separate rather than community income. No evidence was presented in support of these claims, however, and we cannot sustain them.

Appellant Marion Fields failed to disclose any income derived from sources within New York in her 1946 California tax return and she has failed to submit any evidence in this

Appeals of Joseph A. and Marion Fields

proceeding which would establish income from a source within New York. She is therefore not eligible for credit for tax paid to that State under Section 17976(a) (now 18001(a)) of the Revenue and Taxation Code which provided:

* * *

The credit shall be allowed only for taxes paid to the other State or country on income derived from sources within that State or country which is taxable under its laws irrespective of the residence or domicile of the recipient.

* * *

Appellants contend that the Belden case, supra, necessitates giving credit for the taxes Appellant Marion Fields paid to New York. The Belden case is not applicable because the income has not been shown to have been derived from New York sources.

The next question presented is whether the deductions claimed by Appellant Joseph Fields as business expenses were allowable. Appellant contends that the disallowances were arbitrary. However, such an estimate was necessary because Appellants failed to produce any records or other evidence to substantiate the deductions claimed. The Franchise Tax Board recognized that some of the expenses claimed are deductible and has, under the rule of Cohan v. Commissioner, 39 F. 2d 540, disallowed only a portion of the deductions claimed. Deductions from gross income are a matter of legislative grace and are allowable only where the conditions that have been established by the legislature have been met and satisfied. (New Colonial Ice Co. v. Helvering, 292 U. S. 435.) Accordingly, the taxpayer has the burden of proving that he is entitled to the deduction. (Welch v. Helvering, 290 U. S. 111.) Appellant has failed to show that he is entitled to the deductions which have been disallowed. We must conclude that the disallowances were justified.

The last question presented is whether Appellant Marion Fields correctly included in her California income tax return for the year 1946 the gain from the sale of stock of Loma Vista Films, Inc., a California corporation. Appellants belatedly argued at the oral hearing that this was a collapsible corporation and the gain was for personal services outside the State. This contention can be given no weight in the absence of evidence or authority. Under the doctrine of mobilia sequuntur personam shares of stock in a corporation have their situs or location in the state or country wherein their owner resides. (Miller v. McColgan, 17 Cal. 2d 432.) Mrs. Field was a resident of California; and the gain from the sale of the stock was subject to the California tax-

Appealsof Joseph A. and Marion Fields

ORDER

Pursuant to the views expressed in the Opinion of the Board on file in this proceeding, and good cause appearing therefor.,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to Section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protests of Joseph A. and Marion Fields to proposed assessments of additional personal income taxes in the amounts of \$1,941.60 and \$2,008.05 against them, respectively, for the year 1946, be and the same is hereby modified to reflect the conceded allowance to Appellant Joseph A. Fields of the tax credit for net income tax paid to the State of New York. In all other respects the action of the Franchise Tax Board is sustained.

Done at Sacramento, California this 2nd day of May, 1961,
by the State Board of Equalization.

John W. Lynch, Chairman

Paul R. Leake, Member

George R. Reilly, Member

Richard Nevins, Member

_____, Member

ATTEST: Dixwell L. Pierce ,